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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED] DECISION ON REHEARING  
[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 6, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance (MA) – related benefits, a hearing was scheduled for November 18, 2015. The petitioner filed a withdrawal in advance of hearing, and a dismissal ordered was issued. Following the dismissal, the petitioner requested a rehearing, citing confusion over what had happened. Rehearing was granted, and the hearing was then held on December 9, 2015, by telephone.

The issue for determination is whether the petitioner was overpaid MA/Medicare Premium Assistance (QMB) benefits from November 1, 2014 through August 31, 2015.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], ES Spec.  
La Crosse County Department of Human Services  
300 N. 4th Street  
P.O. Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

- [REDACTED]
2. The petitioner is in a household of two persons, herself and her husband. She has been on Family Care (an MA program that assists disabled persons to live in the community) since 2009. Her husband is not on public assistance and works full time. During her annual Family Care review in 2013, the petitioner also requested the Medicare Premium Assistance benefit (a/k/a QMB). She was denied for QMB at that time, due to excess household income. A notice was issued to her, advising that she was approved for Family Care, but denied QMB.
  3. As part of her August 2014 annual Family Care review, the petitioner submitted her husband's paystubs, but added a note saying that her husband was injured on July 7, 2014, and that they were awaiting (1) Worker's Compensation checks and (2) test results to learn the extent of his injuries.
  4. Based on the petitioner's review note, the agency deleted the husband's projected earnings from the household's income. The result was that the petitioner was eligible for both Family Care and QMB. On September 5, 2014, the Department issued written notice to the petitioner advising that she was open for both Family Care and QMB effective October 1, 2014. The QMB benefit pays for the petitioner's Medicare Part A and B premiums. That notice also states that the household's income consisted only of the petitioner's \$887 monthly from Social Security. At page 5, the notice correctly advises the petitioner to report any change in income within 10 days.
  5. The petitioner's husband returned to work (light-duty) and grossed \$3,433.37 in September 2014. The gross income limit for QMB for a group of two persons is \$1,327 (100% federal poverty level). The gross income limit for a group of two persons for any form of Medicare Premium Assistance is \$1,792.
  6. On September 10, 2015, the Department issued a *Wisconsin Medicaid and BadgerCare Plus Overpayment Notice* to the petitioner. It advised that she had been overpaid QMB benefits of \$1,049 from November 1, 2014 through August 31, 2015. See, Exhibit 12.
  7. The petitioner's household income exceeded the income limit for all forms of Medicare Premium Assistance from September 2014 through August 2015.

## DISCUSSION

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

### **49.497 Recovery of incorrect medical assistance pay-**

**ments. (1)** (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. ***The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits*** for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

(emphasis added)

Wis. Stat. §49.497(1). See also, *Medicaid Eligibility Handbook*, 22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

Upon receiving the \$3,433 in income in September 2014, the petitioner should have reported to the agency by October 10 that her income was now over the limit. Such a report would have resulted in the QMB begin discontinued effective November 1, 2014. However, she did not make such a timely report. As a result, QMB payments were clearly, incorrectly made on the petitioner's behalf from November 2014 –August 2015. There is no dispute that the petitioner's household income caused her to be ineligible for QMB during the period.

Thus, the remaining issue in this case is whether the petitioner's overpayment resulted from "... failure of a Medical Assistance ... recipient ... to report any change that in the recipient's ... eligibility characteristics that would have affected the recipient's eligibility for benefits." An income change is to be reported within 10 days. *MEH*, §12.1. The petitioner testified that she called in to the Department's call center on some unknown date, to report the resumption of the husband's income. Her testimony was too vague to be credible. The Department's call center personnel are required to make an entry to the database whenever a recipient calls in to report a change. There is no record of such a call from the petitioner in the Department's records. Thus, I conclude that she failed to report the resumption of the husband's earnings. The statutory requirement for overpayment collection has been met, and the overpayment is therefore recoverable.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid QMB benefits of \$1,049 for the November 2014 through August 2015 period.
2. The Department may not recover the petitioner's Medical Assistance/QMB overpayment for the November 2014 – August 2015 period, because the petitioner failed to report her income change.


**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **APPEAL TO COURT**

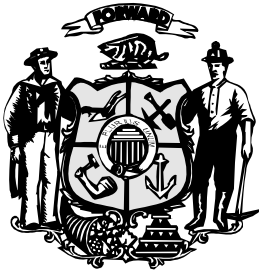
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

  
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of December, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 18, 2015.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability